

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
CCP No. 376 of 2021**

(i) R. Senthil Manohar
(ii) Sujatha Senthil

..... **Complainants**

Vs.

1. M/s. Pacifica (Chennai Project) Infrastructure Co Pvt Ltd.,
2. M/s. Pacifica Builders Pvt Ltd,
Both rep. by its Managing Director, Rakesh Israni

..... **Respondents**

Complainants : Rep by M/s. Sudha Ramalingam, Advocates.

Respondents : Ex-Parte

Heard on : 09.09.2022

Delivered on : 26.10.2022

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondents towards purchase of the apartment with interest, and costs is filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. **Averments of the complainants, in brief, as follows:**

(a) The complainants had booked an apartment in the project of "**Pacifica Aurum Phase – 2 Pride Towers**". The total sale price of the project was stipulated at Rs.39,29,969/- with a promise that the apartment would be handed over by December, 2015 at the latest. The project was registered as TN/01/Building/0181/2019, dated 30.10.2019. The construction agreement and agreement for sale was entered on 14.07.2013. The complainants have paid a total sum of Rs.35,61,335/- as against the total payment of Rs.39,29,969/-.

(b) Due to unreasonable delays, the complainants wish to withdraw from the project. The complainants also refers to the construction agreement

[Signature]
26/10

TRUE COPY

wherein the terms of the agreement include payment of 1% of the amount received per month for such delays, subject to a maximum of 3% of the total amount received, which the complainant submits is the unfair limit on the quantum of damages unduly in favor of the respondents. The complainants therefore seeks refund of Rs.35,61,335/-paid by him along with cost of litigation and compensation.

3. In spite of service of notice, the respondents remained absent and hence treated as ex-parte.

4. In evidence to prove his claim, the complainants have filed proof affidavit with documents.

5. On the basis of the contentions of the complainants, the following points arise for determination.

(i) Whether there has been a delay in handing over the flat to the complainants?

(ii) Whether the complainants are entitled for all the reliefs as prayed for?

6. **Answer for Point No (i):-**

(a) The construction agreement (Ex.A1) was entered on 14.07.2013 and the agreement of sale (Ex.A2) was also entered on 14.07.2013. The construction agreement conveys the allotment of the apartment in 3rd floor of Block D, in Unit D-304 to the complainants. The completion date has laid down in the construction agreement as 30.06.2015 with a grace period of 6 months beyond the date, thereby implying the final date of delivery to be 30.12.2015.

(b) The apartment has still not been handed over to the complainants. Therefore, it is clear that there is a delay in handing over the project

TRUE COPY

Ju
26/10

entitling the complainants for refund. Thus, the point is answered accordingly.

7. Answer for Point No (ii):-

(a) Therefore, the complainants are entitled for refund amount of Rs.35,61,335/- from the respondents.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainants are entitled for the interest at the rate of 7.30% per annum which was the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 9.30% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondents.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:-

- (i) The respondents shall pay jointly / severally the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 7 of this order within 30 days of issue of this order.
- (ii) The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
- (iii) The charge of the aforesaid amount as encumbrance if any, shall be on the flat booked by the complainants till repayment of the claim as per this order. The office of

L
26/10

TRUE COPY

this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.

- (iv) On repayment of the claim as per the order, the complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondents.

-Sd- 26.10.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- Senthil Manohar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	14.07.2013	Construction agreement
Ex.A2	14.07.2013	Sale agreement
Ex.A3	---	Payment receipts
Ex.A4	22.08.2020	Statement of account
Ex.A5	22.08.2020	Statement of account
Ex.A6	22.08.2020	Additional statement of account
Ex.A7	20.09.2020	Disbursement details
Ex.A8	22.04.2019	Complainants notice to respondents

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

-Sd- 26.10.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY
N. Senthil Manohar
26/10/22
Administrative Officer